

Spanish Tax Alert

Patent Box Amendment

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Article 62 of the 2016 Government Budget Act 48/2015 of 29 October (Official Journal of Spain no. 260 of 30 October 2015, pp. 101965-102560) has amended article 23(1),(2) and (3) of the Corporate Income Tax Act 27/2014 of 27 November, which, as of 1 July 2016 and thereafter indefinitely, shall read as follows below, with current sub-articles 3, 4, 5 and 6 renumbered as 4, 5, 6 and 7.

"1. Income earned from licensing out the use or exploitation of patents, designs or models, plans, secret formulas or processes, and of rights over information concerning industrial, commercial or scientific know-how, shall qualify for a deduction in the tax base equal to the percentage obtained by multiplying by 60 per cent the result of the following coefficient:

- a) In the numerator, expenses incurred by the licensor directly related to the creation of the asset, including those arising from outsourcing to unrelated third parties. These expenses shall be increased by 30 per cent, without, in any case, the numerator exceeding the amount of the denominator.
- b) In the denominator, expenses incurred by the licensor directly related to the creation of assets, including those arising from outsourcing and, where appropriate, acquisition of the asset.

Under no circumstances can financial expenses, real estate depreciation or other expenses not directly related to the creation of the asset be included in the aforementioned coefficient.

The deduction provided herein shall also apply in the event of transfer of the intangible assets referred to in the same where said transfer takes place between unrelated entities.

2. In order for the deduction provided in the preceding sub-article to apply, the following requirements must be met:

- a) The licensee uses the rights of use or exploitation in carrying out an economic activity and the results of such use does not materialize as delivery of goods or services by the licensee that generate tax-deductible expenses in the licensor entity, provided that, in the latter case, such entity is related to the licensee.
- b) The licensee is not resident in a Spanish-listed tax haven or zero-tax country or territory, unless it is located in a Member State of the European Union and the taxpayer proves that the operation has a business purpose and that it carries out economic activities.

- c) Where a licensing agreement includes ancillary services, such agreement must separately identify the consideration given in exchange for the same.
 - d) The entity has the necessary accounting records to determine income and direct costs related to the licensed assets.
3. In the licensing of an intangible asset, for the purposes of this article, regardless of whether or not the asset is recorded in the entity's balance sheet, the positive difference between revenue for the year from licensing out the use or exploitation of the asset - deducting the amounts from the same pursuant to art 12(2) of this Act - and those expenses for the year directly related to the licensed out asset, shall be regarded as income".

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